courts of several different states rendering inconsistent decrees against the corporation especially as all interested parties could not conveniently be joined. Accordingly, matters of actual internal management, such as election of officers, issue of stock, declaration of dividends and distribution of assets might well be left to the courts of the domicile. But, on the other hand, where a corporation has all its property and transacts all its business in the state where suit is brought, the fact that it has been incorporated in another state should not deprive the court of all the powers over it which the court has over domestic corporations. Therefore, it is submitted that the foreign character of a defendant corporation should not be conclusive against the jurisdiction of the court, if an effective decree is possible, but should be merely one of the facts to be considered in determining whether the court can do substantial justice to all concerned.

In the principal case it does not appear whether or not the local court had means of pressure such as to render a decree effective. But even if this were the case, equitable relief was properly refused. The defendant corporation was doing business in a number of states, while the plaintiff was not merely seeking to adjust an insurance claim between himself and the company, but was asserting membership as a shareholder. The rights of all parties could best be determined at the corporate domicile.

IMPLIED AUTHORITY OF THE PRESIDENT TO WITHDRAW PUBLIC LANDS FROM ENTRY. — The recent majority decision of the United States Supreme Court upholding the power of the President to withdraw from entry oil lands which Congress had opened to settlement [1] gives legal sanction to the employment of ordinary business methods in the machinery of government, without disturbing the delicate adjustment of power between Congress and the President. *United States* v. *Midwest Oil Co.*, Sup. Ct. Off., No. 278 (Feb. 23, 1915). The defendants made entry on the lands withdrawn, after the issuance of the President's order.[2] While recognizing to the fullest extent that the power over the public domain is lodged primarily with Congress,[3] the court works out an implied authorization of Executive withdrawals from long-continued acquiescence by Congress. The result is sustained on principles of agency, as applied in other situations,[4] and is in no way dependent on any theory that the President has acquired the power by adverse possession.

The government seems to have urged, though apparently not very seriously, that the President, as commander-in-chief of the army and navy, could hold these petroleum lands, as a valuable source of fuel supply, pending action by Congress. As the decision is placed on other grounds, this claim is not denied by the Court, but it seems wholly untenable. Securing an adequate fuel supply, from whatever source, falls

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[1] ACT OF FEB. 11, 1897, 29 STAT. 526, R. S. 2319, 2320.
[2] Temporary Petroleum Withdrawal, No. 5, issued Sept. 27, 1909.
[3] CONSTITUTION OF THE UNITED STATES, Art. IV, § 3.
[4] Wheeler *v.* Benton, 67 Minn. 293; Tennessee River Trans. Co. *v.* Kavanaugh Bros., 101 Ala. 1.

within the province of Congress to "provide and maintain a navy," [5] rather than under the powers of the commander-in-chief. Furthermore, the public lands, the particular source of fuel over which authority is in this instance asserted, are committed to the control of Congress by the Constitution, and the land laws have been passed in pursuance of this power. In no emergency, short of war, can it be said that the power to suspend a duly enacted statute is fairly incidental to the Executive's position as commander-in-chief.

There seems no constitutional objection, however, to Congress delegating by implication the power over the public domain which the President exercised. He may be *expressly* authorized, as an administrative agent with wide discretion, to withdraw public lands from entry.[6] And although it does not follow as a necessary corollary,[7] the constitutionality of an implied delegation of power is equally well supported by the authorities [8] and is tacitly admitted by the dissenting justices in the principal case. But they urge that the implied authority of the President was in this case exceeded, because the acquiescence of Congress has not been established except where the withdrawal was in pursuance of a settled legislative policy, or where the lands withdrawn were the subject of a disputed grant. This classification in fact includes all withdrawals for a public purpose which have come before the courts, but nowhere in the cases is there a suggestion that the implied authority upon which the decisions rely is arbitrarily limited as the dissenting justices suggest. Congress has never disturbed any of over two hundred and fifty Executive orders for land withdrawals for a variety of purposes,[9] including Indian reservations, military reservations, and bird reservations. Where a grant of land by Congress to a state had uncertain boundaries, and the Executive thought the state might be entitled to a larger claim than proved to be the case, the United States Supreme Court upheld a withdrawal by the President,[10] "in order to give the state the opportunity of petitioning for an extension of the grant by Congress." [11] The uniform acquiescence of Congress in the exercise of such varied powers, together with not infrequent appropriations for the use of the lands reserved, lay a solid foundation for the implication of a general administrative agency, with authority adequate to the emergencies which must

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[5] CONSTITUTION OF THE UNITED STATES, Art. I, § 8. It was also pointed out by the dissent that the lands in question being in Wyoming had little connection with naval fuel supply.

[6] Spalding *v.* Chandler, 160 U. S. 394. The withdrawal was authorized for "public purposes."

[7] It might be argued that the guardianship of the public domain was a trust which Congress should not be allowed to delegate save by express enactment.

[8] Grisar *v.* McDowell, 6 Wall. (U. S.) 363.

[9] The enumeration is taken from the majority opinion and is not denied by the dissenting justices.

[10] The Des Moines River Cases: Dubuque & P. R. Co. *v.* Litchfield, 23 How. (U. S.) 66; Wolcott *v.* Des Moines Co., 5 Wall. (U. S.) 681; Wolsey *v.* Chapman, 101 U. S. 755.

[11] See Bullard *v.* Des Moines & F. D. R., 122 U. S. 167. Nor can it be validly argued that the withdrawal was necessary in order to protect the state in what the courts might later construe to have been granted it. Had the land withdrawn been in fact previously granted the state, subsequent occupiers, of course, could not have interfered with the state's prior title.

constantly arise in the management of the public domain. Nor does the failure of Congress to ratify the President's act when requested to do so negative the existence of the power in the present instance, in view of the words of the statute passed that it should not be construed as a "recognition, abridgment, or enlargement" of such rights.[12] Furthermore, it is submitted that the question of ratification is immaterial. It could not have related back to the prejudice of intervening rights acquired by settlers between the order and the ratification.[13]

It is clear that the case should not be interpreted as conferring any additional power on the Executive. It is merely a judicial recognition of the fact that Congress is as likely as any other property owner, busy with affairs, to employ a general administrative agent whose authority is implied from the principal's acquiescence.

ENJOINING WASTE TO PROTECT INCHOATE DOWER. — There is a long standing diversity of opinion in the books concerning the nature of the somewhat impalpable right of the wife known as inchoate dower. It has sometimes been maintained that she has a subsisting interest or estate in land,[1] while on the other hand it is also postulated that the wife had in no sense an interest, but merely an inchoate right of action.[2] A recent New York case makes pertinent the question whether this jejune inquiry is of any practical importance. *Rumsey* v. *Sullivan*, 150 N. Y. Supp. 287 (App. Div.). In a suit by the wife to protect her inchoate dower, the court refused to enjoin waste by the grantee of the husband who took by a conveyance in which the wife did not join, and who was exploiting the land for oil by opening new wells and using wells he had already opened.[3] The only other case that has been found upon the subject is one in South Carolina, which granted an injunction where the husband's assignee was clearing the land of timber.[4]

It is certain that regardless of the view taken as to the nature of inchoate dower, the courts have given it substantial protection in many instances. A wide variety of remedies have been made available to the wife when an alienation has been fraudulently secured by the husband without her consent, or when her consent has been obtained by fraud.[5] Whenever outsiders are to acquire a new interest in the realty, either by act of the parties or by operation of law, the wife's interest is recognized

[12] ACT OF JUNE 25, 1910; 36 STAT. 847.

[13] Taylor *v.* Robinson, 14 Cal. 396; see Cook *v.* Tullis, 18 Wall. (U. S.) 332, 338.

[1] See Simar *v.* Canaday, 53 N. Y. 298, 304; 2 SCRIBNER, DOWER, 6 *et seq.*; 20 HARV. L. REV. 407.

[2] See Moore *v.* City of New York, 8 N. Y. 110, 113; 4 COUNSELLOR, 199, 200; TIFFANY, REAL PROPERTY, § 197.

[3] For a statement of the case, see RECENT CASES, p. 630.

[4] Brown *v.* Brown, 94 S. C. 492, 78 S. E. 447.

[5] Further transfer may be enjoined. Brown *v.* Brown, 82 N. J. Eq. 40, 88 Atl. 186. A judgment may be opened so that she can intervene. Waterhouse *v.* Waterhouse, 206 Pa. St. 433, 55 Atl. 1067. If execution sale brings only a nominal sum, a constructive trust will be imposed on the assignee. Buzick *v.* Buzick, 44 Ia. 259. A deed in which she was led to join by fraud may be cancelled of record. Clifford *v.* Kampfe, 147 N. Y. 383. Or she may have damages at law for misrepresentation. Simar *v.* Canaday, *supra*.